NPAF National Patient Advocate Foundation
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Submitted By E-Mail

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Request for Adjustment to the Medical Loss Ratio (MLR) for the State of Kansas

Dear Secretary Sebelius:

NPAF is a non-profit organization dedicated to improving patient access to healthcare services through both federal and state policy reform. Its mission is to be the voice for patients who have sought care after a diagnosis of a chronic, debilitating or life-threatening illness. NPAF has a fifteen year history of serving as the trusted patient voice. The advocacy activities of NPAF are informed and influenced by the experience of patients who receive direct, sustained case management services from our companion organization, Patient Advocate Foundation (PAF). In 2010, PAF resolved 82,963 cases nationally and provided information to almost 4 million online contacts.

Patients suffering from a chronic, debilitating or life-threatening illness understand that health insurance coverage too often determines whether they will have access to necessary health care services. The challenges they face in trying to maintain the cost of coverage while battling illness escalates their need to assure value of premium expenses. NPAF recommends HHS review the State of Kansas's request for MLR adjustment from a patient-centric perspective. NPAF is concerned that granting the MLR adjustment will likely have a deleterious effect on consumers which will be exacerbated when those consumers become patients.

The medical-loss ratio (MLR) was designed to ensure that Americans receive value for their premium dollars. It provides consumers with an ability to calculate how their premium dollars are spent by identifying the total premium revenue that health plans devote to clinical services, as distinct from administration and profit. The Patient Protection and Affordable Care Act (PPPPACA) sets a minimum level of spending on medical benefits and quality improvement at 80% of premium revenue in the individual and small-group markets.[1] The Congressional Budget Office

[1] Pub. L. No. 111-148 ss1001(5), 1010(f), 124 Stat. 119, 130, 885 (2010) (inserting and amending a new section 2718 in the Public Health Service Act (PHSA)

(CBO) determined the 80% minimum MLR in the individual and small-group markets was attainable by efficiently-operated insurers. NPAF encourages HHS to consider the CBO report as well as the intent of the MLR when considering requests for MLR adjustments.

NPAF recognizes that HHS must consider market forces if it is to assure consume access to health insurance products. The PPACA allows adjustments to the MLR to be granted only if "the Secretary determines that the application of such 80 percent may destabilize the individual market" in a state. HHS regulations[2] allow state adjustment of the MLR standard only if there is a "reasonable likelihood" that the requirement will cause market disruption.

The current MLR requirement for individual health insurance in Kansas is 55%, significantly lower than the PPACA statutory requirement of 80%. To underscore this figure in terms of its impact on consumers, recall that it means for every $100 individual health insurance companies collect from consumers in Kansas, the company pays out a mere $55 in claims. Consider that fact in light of another important fact regarding the challenge consumers face in affording premiums. According to the Kaiser Family Foundation's national annual employer health benefit survey, the average family health insurance premium has increased 27 percent since 2005. This past year health insurance premiums escalated to 9 percent, nearly three times the rate of inflation and the most since 2005.

The Kansas Insurance Department provides the following as justification for the need for MLR adjustment:

> "Kansas is proposing a rule modification that would permit a gradual implementation of the 80% requirement over a three year period in order to (1) provide the insurance companies in the Kansas individual market with time to adjust the business practices that impact their administrative costs, (2) ensure that insurance companies and Kansas consumers have well qualified, fairly compensated health insurance agents and brokers to assist them in the marketing and servicing of policies sold in Kansas; and (3) maximize the opportunity for new entrants into the Kansas market and new options for Kansans."

NPAF reads the above justification with considerable concerns for patients in Kansas. As noted above, the current MLR requirement in Kansas is concerning. According to an article in the *New York Times*, in 2008, the country's for-profit average medical loss ratio in the individual market was 74 percent.[3] NPAF notes with dismay that it does not appear the Kansas Insurance Department included consumer perspectives in market disruption considerations. While NPAF recognizes the importance of the insurance business community in such considerations, consumer value indicators of extant health insurance products are likewise an important market disruption factor. PAF case managers collect data on the patients they serve and compile an annual Patient

[2] 42 C.F.R. § 158.301

[3] Abelson, Reed. "Senate Pressing Insurers on the Amount of Premiums They Spend on Care" The New York Times [New York] 2 November 2009

Data Analysis Report (PDAR). The 2010 PDAR data on top insurance issues for patients served by PAF from Kansas reveal important consumer value indicators of health insurance products :

Out- of- pocket cost - Pharmaceutical	36.00%
Out -of-pocket cost - Facility/doctor visits	32.00%
Out- of- pocket cost - Inability to afford Medicare Part D cost share	10.67%
General benefit/coverage questions	8.00%
Premium assistance	5.33%
Deductible assistance	4.00%

Market destabilization considerations must include consumer impact informed by patient data if they are to be informed considerations. For example, HHS should consider whether granting an MLR adjustment sends a message to insurers that insurance oversight will not be as consumer-centric as indicated in relevant PPACA language. The NPAF invites HHS policymakers to submit requests for PAF patient data to ensure its MLR adjustment request deliberations are well informed of potential consumer impact.

NPAF is concerned with the information submitted by Kansas Insurance Department regarding rebate estimates. Title 45 CFR s158.322(c) requires an estimate of the rebates that would be paid by each issuer for the 2011, 2012, and 2013 MLR reporting years if issuers in the individual market must meet an 80 percent MLR standard in each of those years. Kansas did not submit an estimate of the rebates that would be paid for the 2011 MLR reporting year under the Department's proposed adjusted MLR standard. (The table below will be fixed.)

Total Earned Premium	Reported MLR	Estimated 158.221 MLR	Total Agents/Brokers Commissions	Estimated 158.221 MLR Rebate	Net Underwriting Profit
$17,245,361	61.1%	68.0%	$1,707,288	$2,000,000	$612,472
$3,754,790	62.8%	64.8%	$571,855	$264,199	$94,085
$5,211,396	60.0%	66.9%	$195,647	$167,125	$280,584
$11,195,000	77.1%	70.3%	$989,665	$1,081,000	$2,218,000
$7,474,029	56.9%	66.0%	$764,247	$957,878	$363,099
$16,295,601	52.6%	72.6%	$1,754,431	$1,800,000	$374,798
$50,534,091	76.1%	79.9%	$3,758,281	$57,699	Negative
$147,652,000	88.8%	88% plus	None	None	Negative
$2,933,757	91.0%	85.1%	$327,415	None	$362,423

In summary, NPAF encourages HHS to consider the legislative intent of the *Patient Protection* and Affordable Care Act when considering MLR adjustment requests. Rather than consider the impact of the adjustment on consumers, NPAF believes HHS should consider that impact when it is most crucial- when the consumer becomes a patient.

Sincerely,

Nancy Davenport-Ennis
Chief Executive Officer